



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,326	09/19/2003	Richard D. Bailey	274P	8376

7590 10/20/2004  
William R. Sharp  
Attorney  
P.O. Box 1306  
Miami, OK 74355-1306

EXAMINER

FERGUSON, MICHAEL P

ART UNIT	PAPER NUMBER
----------	--------------

3679

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/666,326

Applicant(s)

BAILEY, RICHARD D.

Examiner

Michael P. Ferguson

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 12 and 13 is/are rejected.
- 7) ☒ Claim(s) 2-11, 14 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 09/19/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Emerton et al. (US 619,684).

As to claim 1, Emerton et al. disclose a fence assembly comprising:

a first fence post **1** extending upwardly from the ground;

a first tubular member **A,8** (Figure 1 reprinted below with annotations) having a first upper end and a first lower end, the first tubular member being received over but not connected to the first fence post such that the first lower end rests upon the ground;

a first lug **10** laterally extending from the first tubular member;

a second fence post **1** extending upwardly from the ground;

a second tubular member **A',8** having a second upper end and a second lower end, the second tubular member being received over but not connected to the second fence post such that the second lower end rests upon the ground;

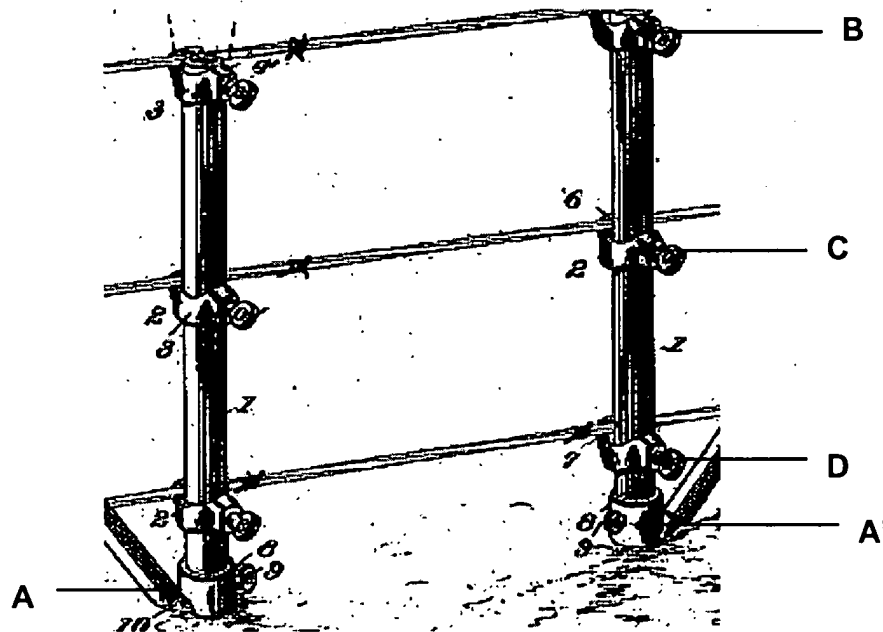
a second lug **10** laterally extending from the second tubular member;

a brace (comprising left and right brace members **11**) having opposing ends (left and right brace members);

Art Unit: 3679

a first connection means for removably connecting one end (left brace member) of the brace to the first lug; and

a second connection means for removably connecting the other end (right brace member) of the brace to the second lug (Figures 1 and 6).



As to claim 12, Emerton et al. disclose a combination comprising:

a tubular member 1 having a longitudinal axis and opposing first and second ends;

a first sleeve B (Figure 1 reprinted with annotations below) rotatably connected to the tubular member so as to be rotatable about but not movable along the longitudinal axis (longitudinal movement being inhibited by wire 7), the first sleeve being more closely adjacent to the first end than the second end;

a pair of transversely opposed and apertured first lugs B,4,6 integrally connected to and laterally extending from the first sleeve;

a second sleeve **C** rotatably connected to the tubular member so as to be rotatable about but not movable along the longitudinal axis (longitudinal movement being inhibited by wire **7**), the second sleeve being more closely adjacent to the second end than the first end;

a pair of transversely opposed and apertured second lugs **C,4,6** integrally connected to and laterally extending from the second sleeve;

a pair of transversely opposed and apertured third lugs **D,4,6** integrally connected to and laterally extending from the tubular member adjacent to the first sleeve and associated first lugs, the third lugs thereby also being more closely adjacent to the first end than the second end; and

a pair of transversely opposed and apertured fourth lugs (fourth clamp **2**; not shown; page 1 lines 57-60) integrally connected to and laterally extending from the tubular member adjacent to the second sleeve and associated second lugs, the fourth lugs thereby also being more closely adjacent to the second end than the first end (Figures 1 and 5).

As to claim 13, Emerton et al. disclose a combination wherein the third lugs **D,4,6** are longitudinally offset from the first lugs **B,4,6**, and the fourth lugs (fourth clamp **2**; not shown) are longitudinally offset from the second lugs **C,4,6** (Figure 1).

***Allowable Subject Matter***

3. Claims 2-11, 14 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. The following is a statement of reasons for the indication of allowable subject matter:

As to claim 2, Emerton et al. disclose the claimed fence assembly with the exception of wherein the fence assembly comprises: a third lug laterally extending from the first tubular member; a fourth lug laterally extending from the second tubular member; a second brace having opposing ends; a third connection means for removably connecting one end of the second brace to the third lug; and a fourth connection means for removably connecting the other end of the second brace to the fourth lug; wherein the first lug is more closely adjacent to the first upper end than the first lower end, the third lug is more closely adjacent to the first lower end than the first upper end, and the second and fourth lugs are adjacent to a line defined by the first and second lower ends.

As to claim 14, Emerton et al. disclose the claimed combination with the exception of comprising: a first bearing means integrally connected to the tubular member for allowing rotation of the first sleeve about but not movement along the longitudinal axis; and a second bearing means integrally connected to the tubular member for allowing rotation of the second sleeve about but not movement along the longitudinal axis.

It would not have been obvious to one having ordinary skill in the art at the time the invention was made to modify a fence assembly as disclosed by Emerton et al. to have the above mentioned elements as the prior art neither teaches nor suggests such modifications.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure. The following patents show the state of the art with respect to fences:

Collins (US 6,705,598) and Beckwith (US 282,039) are cited for pertaining to fences having first and second fence posts, first and second tubular members, first and second lugs and a brace.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Ferguson whose telephone number is (703)308-8591. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*MPF*  
MPF  
10/14/04

*Daniel P Stodola*

DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600